

( 2 ) November 30. 1756.

# INFORMATION

FOR

*John Ramsay of Auchtertyre, and James Richardson*  
Writer in *Edinburgh*, his Trustee;

AGAINST

Mr *John Gowdie* Minister of the Gospel at *Earlston*.

**T**HE Subject of the present Competition, is the Estate of *Maison-Dieu*, which belonged to the deceased *Margaret Morison*.

Mr *Gowdie's* Title to these Lands, is a Gift of *Ultimus heres* in his favours, as supposing the said *Margaret Morison* to have died without Heirs, whereby these Lands should have reverted to the Crown, as *ultimus heres* to her.

*James Richardson's* Title, is an Adjudication upon a Trust-bond granted by *John Ramsay of Auchtertyre*, as Heir to the said *Margaret Morison*, his Cousin.

And though hitherto there has been no Proof of *Auchtertyre's* Propinquity to the said *Margaret Morison*, by reason of the preliminary Objections that have been offered to his Rights, the Debate which is now to be reported by the Lord Justice-Clerk, proceeds upon Supposition, that the Propinquity can be proved. And therefore, without tracing the whole Pedigree, it shall suffice to observe, that *John Morison* of *Drumdoulls* had Issue, one natural Son, viz. *James Morison* Merchant, Burgess of *Edinburgh*, Great-grandfather to the aforesaid *Margaret Morison* of *Maison-Dieu*: That he had also one lawful Daughter, *Marjory*, who intermarried with *David Ramsay of Auchtertyre*; and of which Marriage the present *Auchtertyre* is the lineal

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Descendent. And as from thence it must appear, that the Relation is not very remote, the Court may take it for granted, that the Propinquity will be established by most unexceptionable Evidence.

Bat as your Lordships have heard from the Fact as above stated, that *James Morison* the Merchant, Burgeſs of *Edinburgh*, through whom the Propinquity must be connected, was the natural Brother of *Marjory Morison*, that Difficulty must be removed.

And in order thereto, your Lordships will be informed, that, in the Year 1625, *James Morison* the Bastard obtained Letters of Legitimation from King *Charles I.* of the following Tenor. *Dediſſe et conceſſiſſe, tenoreque præſentium dare et concedere, dilecto nostro Jacobo Morison, bastardo, filio naturali Joannis Morison de Drumdoull, inter ipsum et quondam Jeannem Ker procreato, plenariam potestatem, liberam facultatem, et licentiam ſpecialem, ut ipſe libere et licite diſponere valeat, quovis tempore vitæ ſuæ, ſive æger fuerit, ſive ſanus, ſive in tempore mortis ſuæ, de omnibus et ſingulis terris ſuis, ſive tenementis, annuis redditibus, aſſedationibus, prædiis, et poſſeſſionibus, ubicunque infra dictum regnum noſtrum, ſeu extra idem exiſtent. ac de omnibus et ſingulis bonis ſuis, mobilibus et immobilibus, quæſitis ſeu quærendis, cuicunque perſonæ, prout ipſi magis videbitur expediens; non obſtante baſtardia in qua genitus et natus eſt, et privilegio juris nobis ſuper baſtardorum eſchetis conceſſ. : ac etiam ipſum Jacobum Morison, ad omnimodos actus legitimos in judicio et extra judicium exercendi, dignitatibus, hereditatibus, terris, privilegiis, honoribus, officiis, et poſſeſſionibus gaudendi, in omnibus et per omnia, ſicuti de legitimo thoro procreatus fuiſſet, legitimum fecimus, et, noſtræ regiæ majeſtatis plenitudine, legitimamus. Et ſi contigerit dictum Jacobum Morison, ſine legitimis heredibus de corpore ſuo procreatis, vel ſine diſpoſitione per ipſum de terris ſuis et bonis antediſt. facta, in fata decedere; nos, ex noſtra regia poſteſtate et auctoritate regali, volumus et concedimus, et, pro nobis et ſucceſſoribus*



*successoribus nostris, decernimus et ordinamus, quod propinquior agnatus vel cognatus suus, ex parte patris vel matris, erit ipsius heres, eique in omnibus suis terris, redditibus, possessionibus, et bonis hereditariis, mobilibus, et immobilibus, habitis seu habendis, succedet, et ad eadem per brevia capellæ nostræ regie introibit, simili modo, et adeo legitime vigore hujus nostræ legitimisationis, ac si prædictus Jacobus Morison de legitimo thoro procreatus fuisset, vel heredes de corpore suo legitime procreatos habuisset, aut super dictis terris et bonis suis in vita disposuisset, sine aliquo obstaculo, revocatione, &c. nostri vel successorum nostrorum.*

From the Tenor of the above Letters it appears, that besides the general Act of Legitimation, which of itself would be sufficient to carry all the legal Consequences, the following Particulars are therein specially enumerated, as meant to be comprehended under the aforesaid Grant. 1<sup>st</sup>, The Power of testing and disposing of his Estate, both heritable and moveable, to take Effect after Death. 2<sup>dly</sup>, A Capacity to hold and enjoy all Honours, Dignities, Offices, &c. 3<sup>dly</sup>, That, failing lawful Issue of his Body, his nearest Agnats or Cognats upon the Father and Mother's Side should be intitled to succeed.

And upon looking into the Records of these Legitimisations for near 200 Years past, it appears, that Numbers of them are conceived almost in the identical Words with the above-mentioned Letters in favour of *James Morison*; and which more particularly contain the above-recited Clause in favour of the nearest Agnats and Cognats, intitling them to the Bastard's Succession.

And here it is material to observe, that though by the above Letters the Right of Succession is granted to the Agnats and Cognats, and which, though not expressed, would have been implied as a legal Consequence of the Legitimation itself, there is no special Proviso, that by virtue thereof the Bastard should succeed either to his Father, or other collateral Relations.

tions: So that if any Question had occurred touching the Bastard's Right of Succession, that must have depended upon the legal Effect of a general Act of Legitimation. But as no such Question does here occur, where the Subject in dispute is the Bastard's own Succession, it is sufficient to say, that the Interest of no third Party was thereby hurt or prejudged; but that in as far as any Right could have accrued to the Crown by means of this Bastardy, such Right was thereby transferred to the nearest Agnat and Cognat.

The Defences pleaded on the Part of Mr *Gowdie* may be reduced under the following Heads. 1<sup>st</sup>, That whatever may be the Style of these Letters of Legitimation, the principal, if not the only Thing thereby intended, was, to give the Bastard the *testamenti factio*; that the Enumeration of Particulars, which was the Work and Operation of the Former of the Letters, could not give the Legitimation a stronger Effect than it was by Law intitled to.—2<sup>dly</sup>, That Bastards had by Law no Relations; *Pater est quem nuptiæ demonstrant*; and it was not in the Power of the King to alter the Nature of Things, so as to make a Bastard stand in the Relation of Father, Son, Brother, &c.—3<sup>dly</sup>, That, according to the Words of the aforesaid Letters of Legitimation, the nearest Agnats were intitled to the Succession, only in the Event of the Bastard's dying without Issue; which therefore could not be extended to the Case in hand, where the Bastard had Issue, but who are now failed. And Reference was made to the Authority of *Craig* and *Lord Stair*, which in the Sequel will fall to be more particularly considered.

But, before entering upon the above Particulars, Mr *Richardson* will be allowed to premise some general Observations. 1<sup>st</sup>, That the Law of Nature knows no such Distinction between the Issue procreated in Marriage, or outwith the same; that a Bastard acknowledged by the Parent to be his Child, was *de familia et de cognatione*; and consequently, that any stigma imposed upon Bastards was the Result of a political Constitution



Constitution *in favorem matrimonii*. And so this Matter is elegantly expressed in *Novel. 74. cap. 1.* in these Words. *Liceat igitur, sicuti prædiximus, patri, si legitimam non habeat sobolem, filios restituere nature, et antiquæ ingenuitati, si ex libera ei fiant, et suos de cætero et sub potestate habere: neque enim a principio, quando sola natura sanciebat, hominum fuit quedam differentia, naturalis atque legitimi, antequam scriptæ provenirent leges; et sicut in liberis natura quidem liberos fecit omnes, bella vero servitutem adinvenerunt, sic etiam hinc natura quidem legitimas produxit soboles.*

2dly, That as this *macula natalium*, with all its Consequences, derived its Being from the political Constitutions of different Nations, the same Law had devised different Methods for removing that Tache; or, according to the Words of the above *Novel, filios restituere nature, et antiquæ ingenuitati*; of which the most approved and universally received, are the *subsequens matrimonium*, and the Sovereign's Rescript or Act of Legitimation. And so far as Mr *Richardson* is advised, or has been able to discover, there is not any one Nation whose Laws or Constitutions we are in the least acquainted with, (*England* only excepted), where these two Methods of Legitimation are not acknowledged and received; the last of these as an inherent Right in the Sovereign, in the same Manner and upon the same Principles as he is intitled, *jure coronæ*, to confer the Right of Naturalization upon Foreigners incapable by Law to succeed or be succeeded to, or to hold and enjoy any Office, Dignity, &c.

This appears in a particular Manner to be the Law of *France*, as in the Sequel will be more fully explained, in respect of the great Conformity between the Laws of *France* and the Laws of *Scotland* in these Matters; and which is easily accounted for from the Connection between the two Kingdoms in ancient Times, which had so great an Effect, as to produce a general and reciprocal Act of Naturalization, and to which the Consent of the States of both Kingdoms was adhibited, because of

the Importance of the Act; though, in other Cases, the Sovereigns of both Kingdoms, within their respective Dominions, were intitled, *jure coronæ*, to grant Acts of Naturalization without the Consent of their States of Parliament.

The Constitution of *England* is, in both these Particulars, different from the Constitution of most other Nations. They admit of no Legitimation by subsequent Marriage; and the Sovereign can neither legitimate nor naturalize without Consent of Parliament. But as, by the Constitution of *Scotland*, the Sovereign's Power in both these respects was established and undisputed, the same Powers competent to the King of *England*, with Consent of the States of Parliament, was competent to the Kings of *France* and of *Scotland*, without any such Consent; of which there needs no other Proof than the manifold Acts of Naturalization and Legitimation granted by the Sovereign alone, which appear upon Record.

Many Expedients were devised by the Civil Law to enervate this stigma from the supposed *macula natalium*, and which were finally confirmed and established by the Emperor *Justinian*, per *Novel. 89.*; whereof the Legitimation by subsequent Marriage, or by the Emperor's Rescript, were the most approved; but under this Limitation in favour of the lawful Issue already procreated, that the Emperor should grant no such Rescript, even at the Request of the Parent, for legitimating the *liberi naturales*, where the Parent had at the Time Issue existing of lawful Marriage. These were considered to have acquired an equitable Right to their Father's Succession, of which it would be unjust to deprive them by legitimating the natural Issue. But in all other Cases the natural Children legitimated per *rescriptum principis*, were upon the same Footing and *in pari casu* with the other Children begot in Marriage. They were *sui et necessarii heredes*, and were intitled to the *querela inofficiosa*. The supposed *macula natalium* was held to be obliterated by the Emperor's Rescript of Legitimation; and those who were so legitimate, either by the *subsequens matrimo-*  
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*nium*, or by the Emperor's Rescript, were considered to be upon the same Footing, as if from the Beginning they had been procreated in lawful Marriage.

Upon these Principles it cannot be disputed that King *Charles I.* as King of *Scotland*, was intitled, by virtue of his Prerogative-royal, to grant Warrant for Letters of Legitimation in favour of *James Morison* : And upon that Supposition the Question will remain, 1<sup>st</sup>, Whether the above Letters of Legitimation, in so far as they grant the Right of Succession to the nearest Agnat, failing Issue lawfully procreated of the Bastard's Body, was *ultra vires* of the Sovereign to grant? 2<sup>dly</sup>, Whether the Right thereby granted, was meant to take Effect in the Event that now exists?

And whereas the Counsel for the other Party find it material to maintain, that the Enumeration of Particulars in the the above Letters of Legitimation, is the Work of the Former of these Letters, which therefore can be of no Force, further than as the Particulars enumerated are founded in Law, and such as, whether expressed or not, would have been implied under the general Act of Legimation; and from thence take the Liberty to suppose, that the only legal Effect of these Legitimations, is to give the Bastard the *testamenti factio*; and that as the King could not alter the Nature of Things, by making any Person to stand in the Relation of a Father, Brother, &c. who was not such naturally, the Grant herein contained in favour of the Agnats, could be of no Force, as the Bastard neither had nor could have any Agnats:

Mr *Richardson* is advised, from the Authority of the greatest Lawyers that have treated of this Subject, that the Sovereign's Act of Legitimation has a much stronger Effect than what Mr *Gowdie* is pleased to suppose or admit; that it states the Person legitimated in the same Condition, in every respect, as if he had been the Issue of a lawful Marriage; and has the same Effect to obliterate the *macula natalium* as the subsequent Marriage

riage would have. Such is the manifest Doctrine of the Civil Law, as to which there can be no Dispute.

The Enumeration of Particulars in the Letters of Legitimation may possibly be superfluous, whether expressed or not: And though it shall readily be admitted, that if any Thing were thrown into these Letters contrary to their Warrant, clearly against Law, or such as the Sovereign manifestly had not Power to confer, the Grant would in so far be ineffectual; yet, as ancient Usage and Custom is *optima legum interpres*, there cannot be a stronger Proof of what was understood to be the Royal Privilege in this Particular, than the Tenor and Style of these Letters of Legitimation, particularly as to that Clause which grants to the Agnats the Right of Succession to the Bastard's Estate, failing him, and the Issue lawfully procreated of his Body.

And after perusing the Authors of the greatest Character, particularly *Bacquet's Treatise des droits du domaine de la couronne de France*, and his other *Treatise des droits de bastardise*, both which Treatises are justly held in the highest Estimation; Mr *Richardson* finds from the *French King's Letters of Naturalization and Legitimation* which pass under the Great Seal of *France*, as therein set down *ad longum*, that they are in every respect similar to the Letters of Legitimation in use to be granted by the Kings of *Scotland*, and contain the like Enumeration of Particulars; whereof the principal are these: 1<sup>st</sup>, A Power in favour of the Bastard to dispose of his Estate by Testament. 2<sup>dly</sup>, A Qualification to enjoy Offices, Dignities, &c. 3<sup>dly</sup>, A Right of Succession in favour of the Agnats or Cognats of such Bastard, upon the Failure of Issue of his Body. The Letters of Naturalization are to be seen under the *Treatise des droits de domaine*, fol. 50. and the Letters of Legitimation under the *Treatise des droits de bastardise*, fol. 125.

It may at the same time be fairly admitted, that, notwithstanding of this inherent Privilege of the Sovereigns of the different Countries to grant Letters or Rescripts of Legitimation,  
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it has been considered as a doubtful Point, whether the Sovereign, by such Legitimation, could give to the Bastard a Right of Succession to his own Father, or other collateral Relations. That the Emperor's Rescript had this Effect, and was understood to state the Bastard in the same Case as if he had been born in lawful Marriage, is clear and undisputed; but whether it has the same Effect, *ex usu gentium*, in the Practice of this and other Nations, is more doubtful.

The Generality of Lawyers lean to the opposite Side. They consider it to be an Act of Injustice; and therefore *ultra vires* even of the Sovereign, that he should impose an Heir upon any Man without his Consent: And therefore the general Solution of this Difficulty is, that the Sovereign's Letters of Legitimation are not effectual to give to the Bastard a Right of Succession, not even to his own Father, or other his collateral Relations, unless the Person whose Succession is claimed has consented to the Legitimation. But then they hold it to be a fixed Principle, That the Bastard's Relations will succeed to him preferably to the Fisc, whether they have consented or not to the Legitimation; in regard that the Sovereign, by granting to the Bastard the Right of Legitimacy, renounces and gives up every Right competent to him, *jure fisci*, to the Bastard's Estate.

Chopinus *de legibus*, fol. 358. states the Question, *An nothi intestati bona competant domino juridico, an propinquis ipsius natalibus restituti?* which he concludes in these Words, *Sed propinquiorum causam potiore, arguunt validiores juris rationes.* And he establishes it to be a Rule, That though a Bastard legitimated does not succeed to any Agnats, but such as consent to his Legitimation, *Longe alia istorum causa est in nothi hereditate cernenda; nullius enim interest hac in specie, dempto fisco, qui nothorum statum immutans, cessit jure suo.* This Doctrine he confirms by several Decisions in the French Courts. And fol. 360. treating of the Bastard's Descendents, he says, *Hinc quoque tales nothorum liberi justos habent heredes, posteros ac nepotes, aut iis deficientibus,*

*deficientibus, consobrinos ante fiscum, et agnatos transversa linea, velut ex successorio quodam edicto.*

What this learned Author therefore establishes to be the Law upon this important Question, resolves in the following Particulars. 1<sup>st</sup>, That the Bastard legitimated succeeds to all his Relations, to whom he would have succeeded had he been of lawful Marriage, who consented to his Legitimation. 2<sup>dly</sup>, That not only the Descendents of the Bastard, but also his Collaterals, are *suo ordine* intitled to succeed to him. For that, 3<sup>dly</sup>, The Sovereign, by granting the Legitimation, and thereby changing the Bastard's State, has yielded up the Right which otherwise would have been competent to the Fisc. And the Decisions of the *French Court* referred to by this learned Author, are so many Confirmations that such is the Law of *France*, where the general Principles are the same with those of the Law of *Scotland*.

*Charondas*, another Author of great Repute, in his Collection of the *Reponses, ou decisions du droit François*, fol. 126. rep. 24. after laying it down as a Principle, That the King is Heir to Strangers, unless naturalized, and to Bastards, unless they have obtained Letters of Legitimation, mentions the Case of a Stranger naturalized dying in *France*, whose Succession was disputed between the Crown's Donatar, and some Collaterals of the Person naturalized, but in which the Succession was adjudged to the Collaterals. It was afterwards proved, that this Stranger was a Bastard. The Collaterals produced Letters of Legitimation, granted by the Duke of *Ferrara*, in whose Dominions he was born. Upon this a Question arose, Whether Legitimation granted by a foreign Prince, did so establish the *status personæ*, as to have the Effect of Legitimation in another Kingdom? And though the Author does not inform how this Question was decided, it evidently appears, from the Doubt stated upon the above Case, that it could not have admitted of a Question, if the Legitimation had been granted by the Sovereign of that Country where the Question arose.

And the same learned Author, fol. 464. rep. 7. has this remarkable



remarkable Passage, directly in point to the Case in hand. *Au contraire, au bâtard légitime mourant sans enfans succéderont les parens collatéraux, à l'exclusion du fisc, parceque le Roy en le légitimant semble avoir remis et quitte le droit qu'il eut peu prétendre en la succession par le moyen de la finance qu'il en auroit reçu, et partant les biens doivent venir a ceux en le parente, desquels il seroit entre n'y ayant en eux tache aucune que les en put priver.*

And again, in fol. 76. rep. 85. his Words are, *Le Roy en lui otant le tache et macule de bastardie s' exclud de lui succeder tellement que ses parens du sang et ligne des quels il se recognoit être descendu lui, sont les vrais heritiers, et non le Roy.* And this again he confirms by two other Cases, where Judgment was so given.

*Gudelinus de jure novissimo, lib. 1. cap. 15. § pen.* says, that, by the Customs of *Flanders*, a Clause is commonly added to Legitimations, requiring them to be confirmed in the Treasury-chamber and registrate. *Interest namque principis legitimaciones nothorum non temere admitti, et certo cognitos haberi, tum propter jus successionis quod fisco alioque in bona eorum, tanquam vacantia, competere consuevit.*

To the same Purpose, *Voet, tit. de concubinis*, after observing, *parag. 13. quod ultimus legitimandi modus est ex rescripto principis, quando scilicet princeps jura liberorum legitime natorum illegitime natis tribuit*; he proceeds, in § 15. to consider, whether the Consent of the Father, or other Relations, is requisite to such Legitimation. And the Solution he gives is, *Nec tales citandi, ut legitimacioni ex aliqua causa contradicant, nisi legitimandis etiam agnatis per patrem junctis succedere gestiât.* This he confirms by the several Authorities there referred to: And then proceeds to state more particularly the Law of *Holland* in such Case. His Words are: *Etenim in Hollandia jus est, ut legitimati ex rescripto, non aliis ex latere paterno agnatis succedunt, quam qui suum in legitimacionem faciendam aut jam factam consensum præstiterint.*

These Authorities from foreign Lawyers shall be concluded,  
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by referring more particularly to the above-mentioned Treatise of *Bacquet*, where the whole Subject-matter of Bastardies and Legitimation is most accurately handled, upon the same Principles, and in most Particulars similar to the *droit d'aubain*, and Naturalization.

In *cap. 6.* he remarks it as one essential Difference between the *droits d'aubain*, and the *droits de bastardie*, that Bastards, by the Law of *France*, had the *testamenti factio*. In *cap. 9.* he observes, that there are but two Methods of Legitimation in *France*, viz. by subsequent Marriage, and the King's Letters-patent. And in § 4. of the said Chapter, he observes, that these Letters of Legitimation are founded, both in the Disposition of the Civil and Canon Law. In *cap. 10.* he gives a full Copy of these Letters of Legitimation. And in *cap. 11.* the Question there treated of is, Whether Bastards legitimated by the Prince, can succeed to their Parents, if they have not consented to the Legitimation? which he resolves in the Negative, in these Words. *Toutefois en France telles lettres de legitimation ne profitent, sinon quantum ad honores, pour tenir offices, benefices, et dignitez, non pas quantum ad successiones, pour succedere a pere, mere, ou autres parens.* And in § 2. *Tellement qu' en France auparavant que le bastard, par le moyen des lettres de legitimation, puisse succedere a ses pere et mere naturelles, il est bossing que les pere et mere ayant eux mesmes obtenue pour leurs enfans naturelles les lettres de legitimation, ou bien ayent consenti.*

In *cap. 12.* he treats of this other Question, Whether Bastards legitimated by the Prince, of Consent of their natural Parents, are intitled to their Succession, though the presumptive Heirs have not consented to the Legitimation? This he resolves in the Affirmative. And this also he confirms, by referring to several noted Cases, where it was so judged in the last Resort.

In *Cap. 13.* he lays it down for a Rule, That Bastards legitimated by the Prince, cannot succeed to their Parents, or other Relations, unless these Parents and other Relations had  
consented



consented to the Legitimation; and refers to the Cases where it was so determined.

And in *cap.* 14. he states this Question, which is more directly in point, Whether the Relations of the Bastard legitimated, but who had not consented to his Legitimation, would succeed to the Bastard *ab intestato*; or whether the King would be preferable? He refers to several remarkable Cases, where this Point was strongly disputed. He gives a Summary of the Pleadings by the Counsel on both Sides; and remarks the ultimate Judgment in all those Cases to have been in favour of the Collaterals. And in § 18. of said Chapter, he gives it as his Advice, as the most proper and safe Method in obtaining such Letters of Legitimation, that they bear an express Clause, importing, that the Relations of the Bastard legitimated shall succeed to him *ab intestato*, preferably to the King.

And as from the *French* Letters of Legitimation, as above referred to, it appears, that they contain the above Clause in favour of the Agnats, touching their Right of Succession to the Bastard, which this learned Author advises should be therein inserted, *ob majorem cautelam*, the Letters of Legitimation by the Kings of *Scotland* can with no Reason be objected to in respect of the like Clause contained in them.

Many other Authorities, referred to in the above-mentioned Treatises, might be produced, in confirmation of the above Principles. But as those already mentioned may seem sufficient, Mr *Richardson* will take the Liberty, from the Authority of these, to suppose, that, by the Laws of these Countries, the simple Act of Legitimation by the Sovereign's Rescript, divests the Crown of all Right acclamable *jure fisci*, of or concerning the Bastard's Succession, and makes way for the Succession of the nearest Agnat, upon the Failure of the Bastard and his Issue; and that *esto* there could have been any Doubt upon this Point, had the Letters of Legitimation been silent in that Particular, as it was undoubtedly in the Sovereign's Power to

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give that Effect to the Legitimation, he has done so in the present Case, by the above-mentioned Clause.

And though Questions of this kind have seldom occurred in the Practice of the Law of this Country, there are not wanting both Authorities and Precedents for proving, that such also is the Law of *Scotland*; and consequently, that the above-recited Clause in favour of the collateral Relations, was properly inserted in said Letters of Legitimation, and therefore must have all the Effects of a legal Grant by the Sovereign in their favour.

*Balfour*, in his *Practics*, Title *Bastards*, fol. 240. establishes the Rule, not as a doubtful Question, but as fixed and undisputed Law. His Words are, " Giff ony Person born Bastard, " be afterward lawfully rehabilitat and legitimat by the King, " and thereafter happens to decease, having Lands, Tenements, " or ony moveable Goods, the Heirs lawfully gotten of his " Body, and failing thereof, any others his nearest and lawful " Heirs whatsoever, have full Power and Right to succeed to the " said Lands and Goods, likeas the said Person had been lawfully " gotten or born: And therefore the King, nor his Donatar, " has no Right nor Title to the same by reason of Bastardy; " specially giff the same be contained in his Letters of Legitimation." This he confirms by two Decisions, 10th November 1502, and 29th March 1503, *William Sinclair*, the King's Donatar, *contra Archibald Edmonston*. This is an Authority in point, confirmed by two Decisions of the supreme Court. And your Lordships will particularly attend to these last Words in the above Passage, *specially giff the same be contained in his Letters of Legitimation*. Which confirms these two Propositions. 1<sup>st</sup>, That, in the Practice of those Days, a Clause to the above Purpose was properly inserted in the Letters of Legitimation. 2<sup>dly</sup>, That it was but *ob majorem cautelam*; for that, whether expressed or not, it would have been implied under the general Act of Legitimation. So that this learned Author thereby gives the same Opinion and salutary Advice as *le Sieur Bracquet*, in the

the Passage above referred to, where he advises this Clause to be inserted, in order to avoid any Dispute or Ambiguity.

The same Author (*Balfour*) in the same Title, *parag. 11.* proceeds in these Words. " Giff ony Person born Bastard be lawfully rehabilitat and legitimat, he has Power to make an Testament, dispone his Goods and Gear, and to nominate Executors; and giff he makes Testament, or failzie to make the same, the King, after his Decease, has nae Right or Title, by reason of Bastardy, to his Goods or Gear, or to ony Debts which were aughtaned to him the Time of his Decease." And this he confirms by other two Decisions, 21st February 1542, and 27th June 1550, *King contra Bishop of Aberdeen.*

The same Doctrine is assumed by the learned Author of the late *Institute*, vol. 1. fol. 122. His Words are, " Legitimation by the Rescript of the Emperor, might have proceeded at the Desire of the Father, and would have enabled the Children to succeed to him, in case he had no lawful Issue; but had no Effect as to other Relations. With us Legitimation by Letters from the Sovereign, for most part only capacitates the Party to make a Testament: For as to Deeds *inter vivos*, he is capable to grant them without it; and the Father, or any other Person, may create a Bastard Heir of Entail to his Estate. But it were unreasonable, that by a Grant from the Sovereign such Child should be enabled to succeed, in prejudice of the lawful Heirs: Nor can the King dispense with the Law, which intitles them to inherit."

This your Lordships will perceive respects only the Bastard's Right of Succession to his Father and other Relations. But with regard to the Bastard's own Succession, the same learned Author proceeds in the next Section in these Words. " But where the Interest of third Parties is not concerned, the King may legitimate Bastards, in order that they may succeed to one another, or be succeeded to; but not to qualify them to inherit to any of their Relations, except their own lawful Children dying without Issue. Thus, put the Case,



“ Case, That there are several base Sons of the same Father, the  
 “ King by Legitimation may capacitate them to succeed to  
 “ one another, or to their own lawful Children dying with-  
 “ out Issue; *because such Succession or Legitimation is only preju-*  
 “ *dicial to the King, who may dispense with his own Prerogative*  
 “ *as effectually as his Majesty might gift the Escheat of Bastardy,*  
 “ *or Ultimus heres, after it had fallen.*”——And he remarks,  
 that this was the Case of *Andrew Lord Evandale*, sometime  
 Lord High Chancellor of *Scotland*; who being the King’s nat-  
 ural Son, obtained Letters of Legitimation to the above Pur-  
 pose, in favour of himself and his two base Brothers, *Arthur*  
 and *Walter*, which are still extant in the public Records; and  
 that, by virtue thereof, *Alexander* the Son of *Arthur* succeeded  
 to his Uncle *Andrew* in the Lordship of *Evandale*.

Having thus established by Authorities and Precedents, both  
 foreign and domestic, the Principles assumed by Mr *Richardson*  
 in support of his Claim under the afore said Letters of Legiti-  
 mation, in opposition to the Claim of the other Party, found-  
 ed upon the late Grant of *Ultimus heres* in favour of Mr *Gow-*  
*die*; and having thereby in a great measure obviated the De-  
 fences or Objections for him pleaded, a very few Words will  
 suffice in answer to the several Particulars.

And it being objected, in the *first* place, That Letters of  
 Legitimation were understood to have no other Effect but to  
 give the Bastard the *testamenti factio*; and that the Particulars  
 enumerated in these Letters, are the Work and Operation of the  
 Person by whom they are formed, without proper Authority;  
 which therefore could confer no Right further than was war-  
 ranted by Law; and which would have been implied under a  
 general Act of Legitimation, though not expressed: Mr *Rich-*  
*ardson* is hopeful to have satisfied your Lordships, that these  
 Letters of Legitimation, of the Tenor above recited, are simi-  
 lar to the like Letters practised in other Countries; that the  
 Propriety of these Letters is confirmed by the Usage and Prac-  
 tice of at least two Centuries in this Country; and, more  
 particularly,

particularly, that the above-mentioned Clause in favour of the Agnats, was thought proper to be inserted in the Letters of Legitimation, purposely to avoid this very Doubt, Whether by the general Act of Legitimation, wherein Particulars were not expressed, *hoc agebatur*, that, failing the Bastard, and the lawful Issue of his Body, his collateral Relations should succeed preferably to the Fife?

Mr *Richardson* will at the same Time confess, that it appears to him to be very immaterial to the Point in issue, whether the above Clause shall be understood to have been specially under the Sovereign's Consideration when he granted Warrant for these Letters of Legitimation. *Optima legum interpret est consuetudo*. But be that as it will, Mr *Richardson* apprehends, and is advised, for the Reasons and upon the Authorities above referred to, that this would have been implied in the general Act of Legitimation, though no such Clause had been inserted.

Nor is this any wise contradicted by the Passage referred to from Lord *Stair*, tit. *Confiscation*, parag. 45. His Words are: "Legitimation, though it has many ample Clauses, yet the main Effect of it is, that the Bastard, having no lawful Children, hath thereby Power to test." This learned Author is thereby so far from finding fault with those Clauses in the Letters of Legitimation specifying some of the Particulars thereby meant to be granted, that he expressly makes mention of the Letters of Legitimation, as containing many ample Clauses. And though, in his Opinion, the Power of Testing was the principal Benefit that accrued from the Legitimation, it would be an absurd Consequence from thence to infer, that the King, by legitimating, could confer no Right but the bare *testamenti factio*. For as to these Words, *But it hath no Effect as to his heritable Rights, which his Testament cannot reach*; however inaccurate the Expression may be, it is plain, that all the learned Author thereby intended was, that the *testamenti factio* did not intitle the Bastard to dispose of his heritable Estate by Testa-

E

ment,

ment, or upon Deathbed; in respect that, by the Common Law of this Country, no heritable Estate can be conveyed by Testament, or upon Deathbed; and the Legitimation of the Bastard could not be intended to put him on a better Footing than others his Majesty's Lieges.

And whereas it was objected, in the *second* place, That Bastards have by Law no Relations, *quia pater est quem nuptie demonstrant*; that the King cannot alter the Nature of Things, or constitute a Bastard in the Degree of any of these Relations:

Mr *Richardson* apprehends, that this is merely a Dispute about Words. It has been proved from the Constitutions of the *Roman* Emperor, and from the other Authorities above mentioned, that the Sovereign's Rescript, as well as the *subsequens matrimonium*, is understood totally to obliterate and deface that *macula natalium*; which, being the Child of civil Power, might be undone by the same Authority, and the Bastard restored to his natural Right. This is plainly the Case of Legitimation *per subsequens matrimonium*, which is the private Act of the Parent of the Bastard; and why the Sovereign's Act should not operate as strongly, no good Reason can be assigned. But it is in vain to inquire after Reasons, where the Sovereign's Power in this Particular is so clearly established in the Law and Practice of Nations.

But whether the Sovereign can correct this supposed Defect of Blood so effectually, as to constitute the Bastard in the same Degree of Relation to these his *agnati*, it is impossible to deny that the Crown might grant to these *agnati* the Right of Succession to the Bastard's Estate, failing Issue-lawful of the Bastard's Body; in regard that the Interest of no third Party would be thereby hurt or prejudged, where no more was granted but the Right of Succession to the Bastard himself, in which no third Party could possibly have a Concern. These Agnats cannot be in a worse Case than if the Crown had made a Gift of the Bastardy in their favour. They are the King's Donatars whether they take under the Letters of Legitimation, or by special



cial Gift. So that it is truly a vain Dispute whether the Sovereign can so effectually remove the *macula natalium*, as to place the Bastard in any Degree of Relation to these his Agnats.

And whereas Mr Gowdie, in arguing these Objections, seemed principally to rely upon Sir Thomas Craig's Authority, *lib. 2. dieg. 18. parag. 12. & 13.* which are too long to be here transcribed; your Lordships will observe, that, in the former Sections, he is treating, not of the Bastard's own Succession, but of the Bastard's Succession to his Father and other Relations.

From which he takes occasion, in § 12. to state it as a Question, For what Purpose these Legitimations are obtained from the Prince? *In quibus princeps habiles et aptos bastardos ad omne genus successionis facit, et, ut tam parentibus quam cognatis succedere possint, iis permittit; verbane illa sine effectu erunt, et dicis causa adjecta?*

Upon this State of the Question as proposed by the learned Author, your Lordships will observe, that it still respects the Capacity of the Bastard himself to succeed to his Parents and other Relations, which has nothing to do with the present Case. And though Sir Thomas Craig here supposes, that it was usual to insert a Clause to the above Purpose in these Letters of Legitimation, making the Bastard capable to succeed to these his Relations; Mr Richardson will be pardoned to say upon the very best Authority, that this Supposition is absolutely erroneous: For that, upon looking into the Records of these Legitimations for near 200 Years past, he has not been able to discover one Instance of the many Legitimations therein recorded wherein such a Clause is contained, and doubts much if any will be found of a prior Date.

And though the same learned Author, in support of his Opinion for the Negative of this Question, does say, that the King cannot make an Heir or Successor to any Person other than an Heir of Tailzie, or cause that Person to have Parents, *agnatos* or *cognatos*, *qui per legem habere non potest*, a Proposition which in one Sense might safely be admitted; the Reason he assigns for  
this

this is remarkable, *Iniquum enim esset aliquem heredem invito à principe dari.*

But as this supposed Injustice would not stand in the way where the Legitimation to the aforesaid Purpose was granted by Consent of that Person to whom it was intended that the Bastard should succeed, he proceeds to consider how that Matter stands. His Words are: *Sunt qui putant, cum consensu domini, quempiam posse legitimari, ad successionem feudi: quod verum est, et apud nos in feudo novo; nam ei expresse concedere potest quod nos talliari dicimus. In feudo antiquo, eodem modo, ex mutua domini et vassalli conventionione et consensu, licet plerique in hoc feudo dissentiant; at, apud nos et in Gallia, Rex (nam ejus solius est legitimare) non potest efficere ut bastardus succedat sine ejus expresso consensu cui succeditur, veluti patris, si patri succedere debet: nec tamen collateralibus succedit, nisi hoc expressum in carta legitimationis fuerit, et omnes consenserint quibus succedi debeat; neque enim æquum est non consentienti heredem alium dari quam eum quem lex ei definivit. Itaque, ut collateralibus succedat, collateralium consensus requiritur.*

From the above Quotation, *tota lege perspecta*, it is apparent that Sir Thomas Craig is there only treating of the Bastard's Right of Succession to his Parents, and other Agnats, upon the Supposal that a Clause for that special Purpose was frequent and usual in these Letters of Legitimation; which however does not appear to be Fact. 2dly, That the capital Reason assigned why such Clause should not operate, is the Injustice thereby done to the Person to whom the Bastard was to succeed, by imposing upon him an Heir against his Will. 3dly, And therefore upon the Principle, *Quod volenti non fit injuria*, he holds it to be undoubted Law, That such Clauses will be effectual, where those Persons to whom the Bastard is to succeed, consent to the Legitimation. 4thly, And in that View he approves of the Clause to the above Purpose in the Letters of Legitimation: 5thly, And holds it to be Part of the Royal Prerogative both in Scotland and France, *quod solius est Regis legitimare*.

This

This Opinion of Sir *Thomas Craig*, upon the Question stated, respecting only the Bastard's Right of Succession to his Parents and other Agnats, is therefore, in all the material Articles, agreeable to the foreign Authorities above quoted. He does not seem to have considered it as Matter of Doubt, whether, by the general Act of Legitimation, with or without a special Clause for that Purpose, the Agnats of the Bastard legitimated could succeed to him, in regard that no Prejudice was thereby done to the Interest of any third Party. All that could thereby be carried, was that Right of Escheat or Bastardy which would have befallen to the Crown *jure fisci*, which the Crown was intitled to dispose of, and which by the Act of Legitimation he was understood to have renounced and given up in favour of the natural Relations of the Bastard legitimated. And it would have been manifestly absurd to have required the Agnats Consent to a Grant of this kind in their own favour, in order to intitle them to the Succession of the Bastard; and as the above-recited Clause clearly shows that such Right was meant to be granted, these Agnats are, by virtue of the aforesaid Act of Legitimation, the King's Donatars to the Bastardy.

But it is objected, in the *last* place, That the Condition has not existed, upon which that Grant was to take place, *viz.* in case of the Bastard's dying without Issue; for that in Fact the Bastard left Issue: And though these have now failed, whereby the Crown's Right as *ultimus heres* revives, the aforesaid Letters of Legitimation are not effectual to convey such Right.

But it is submitted to your Lordships, that this is a mere Criticism. It has been already established, that the simple Act of Legitimation restores the Bastard to his natural Capacity, and states him *in eodem statu* as if he had been born in lawful Marriage; that this intitles the natural Agnats to succeed in the same manner as if there had been no Bastard; and that the King thereby quits and renounces in their favour every Right competent to him, or his Successors, by the Bastard. And where that is the Case, the Agnats must be intitled to take, whenever



the Succession opens to them in the due Course of Law, whether the Succession devolves by reason of the Bastard's Decease without Issue, or by the after Failure of that Issue.

It is a fixed Rule in the Law of *Scotland*, That Substitutions in favour of one failing Issue of another, are equally effectual, whether that other had never any Issue, or upon the after Failure of such Issue. And, even according to the most critical Construction of the above-recited Clause in these Letters, it is true, that both the Bastard and his Issue have failed. And where the Purpose of the Grant manifestly was, to legitimate the Bastard himself; and failing Issue of his Body, to make his Succession transmit to his nearest Agnats; it would be *facere fraudem* to the Royal Grant, to set up a Distinction between these two Events, of the Bastard's leaving no Issue, or of that Issue's afterwards failing.

And therefore, upon the whole, it is hoped your Lordships will have no Difficulty to sustain Mr *Richardson's* Title, and to allow the Propinquity to be proved.

*In respect whereof, &c.*

ALEX. LOCKHART.

### List of Legitimations, taken from the Records, granted by different Kings of *Scotland*.

N<sup>o</sup> 923. John Luke, 10th November 1594, not so full as James Morison's.

N<sup>o</sup> 919. Alexander Grant, 10th February 1592, not so full. N. B. These two granted by the King alone.

N<sup>o</sup> 855. Alexander Macdonald, 10th February 1582, not so full.

N<sup>o</sup> 856. Robert Hamilton *Victoris*, natural son of Robert Hamilton of Bardowie, with consent of the Lords of the secret council. It is *verbatim* the same with James Morison's, and contains

contains the clause which the other three want, 18th February 1582.

N<sup>o</sup> 855. Alexander Macdowall, 10th February 1583, is in the same Terms with the others, (excepting that of Bardowie), and does not contain the clause, *Præterea damus et concedimus*. Nor is it granted with consent of any Commissioners, Lords of council or state.

N<sup>o</sup> 852. Alexander Herriot, the same as above, 21st January 1583.

N<sup>o</sup> 827. Alexander Gordon, 1st March 1583, the same.

N<sup>o</sup> 803. William Lumisden, 20th April 1583.

N<sup>o</sup> 736. Alexander Gordon mercator in Aberdeen, natural son to James Gordon of Craigmill, *burgæ de Edinburgo*, 20th March 1581.

N<sup>o</sup> 782. Peter Oliphant, 18th April 1583.

N<sup>o</sup> 776. Christopher Porterfield, 22d November 1583.

N<sup>o</sup> 777. Walter Ker, son of Walter Ker of Graden, the same as Morison's, 27th November 1582.

N<sup>o</sup> 774. William Stevenson, 11th December 1583, wants the clause.

N<sup>o</sup> 770. Alexander Leslie, wants the clause, 20th November 1583.

N<sup>o</sup> 750. George and Alexander Hitchies, 20th April 1583, wants the clause.

N<sup>o</sup> 743. William and John Crawford, 13th September 1583, wants the clause.

N<sup>o</sup> 725. John and Alexander Campbells, children of Mr John Campbell, Bishop of the Isles, 12th September 1582, wants the clause.

N<sup>o</sup> 708. John and John Bryces, 3d July 1583.

N<sup>o</sup> 688. John Bonadge, son of Bonar of Rossie, has the clause, 26th February 1582.

N<sup>o</sup> 689. Arthur Davidson, son of Thomas Davidson burges of Aberdeen, 10th March 1682.

N<sup>o</sup> 686. Robert Nisbet, son of Thomas Nisbet, and of David,

vid, the son of said Robert, (this Robert is called the King's servant), 20th December 1582, has the clause, and is granted with consent of the privy council.

N° 674. John Macculloch, 7th March 1581.

N° 667. Thomas Henry, son to John Henry in Elen chapel, 20th February 1582, has the clause, no consent.

N° 668. Thomas Gibson in Tulloch, son of James Gibson in Preston, has the clause, 20th February 1582.

N° 653. William Macmillan, wants the clause, 18th December 1582.

N° 629. George and William Barons, sons of Mr Alexander Baron at the Temple of Tyvie, wants the clause, 17th July 1582.

N° 593. William Macintosh, son of James Macintosh of Clune, 20th February 1581, has the clause.

N° 588. James Muiries, last of February 1581, wants the clause.

N° 578. David Boyd, son of Robert Lord Boyd, 11th July 1582, wants the clause.

N° 576. Robert Neilson, son to John Neilson burghers of Inverness, 24th July 1582, wants the clause.

N° 575. John Robertson, 19th April 1582.

N° 517. Archibald Hair, son of Thomas Hair, wants the clause, 23d March 1579, but *cum consensu*.

N° 513. John Dalgarn, 26th December 1680, wants the clause.

N° 489. Janet Muir, bastard-daughter of Robert Muir, 18th February 1581, has the clause.

N° 473. George and James Setons, sons of William Seton of Meldrum, and Margaret, spouse of William Gordon of Aradowie, 8th December 1581, wants the clause.

N° 453. Gilbert Frizell in Crookie, son of Andrew Frizell of Stonywood, 18th December 1579, wants the clause.

N° 441. Robert Herring, son of William Herring of Sor-nought, 1st June 1581, wants the clause.

N° 393.



N° 393. Bessy Reidputh, Daughter of Thomas Reidputh of Reidputh, 10th May 1581, wants the clause.

N° 376. John Arbuthnot, natural son of Mr Peter Arbuthnot elder of Phipick, 7th April 1581, wants the clause.

N° 335. Andrew Leslie, *alias* Sidler, son of Robert Leslie, 26th November 1580, wants the clause.

N° 307. John Henry, Son of David Henry Presbyter of Aberdeen, 13th February 1580, wants the clause.

N° 296. Margaret Aberdeen, 15th December 1580, wants the clause.

N° 297. Walter Learmont, son of James Learmont of Inmen, 13th February 1580, wants the clause.

N° 298. William Junkine Lermou in Gavil, wants the clause, 2d February 1580.

N° 286. James Keith, son of Andrew Keith of Craigs, 20th December 1580, wants the clause.

N° 287. John Fesherm Curhilm mill, 1st December 1580, wants the clause.

N° 279. John Murray, 13th January, wants the clause.

N° 275. Lady Jean Stuart, bastard of James V. by Elisabeth Beaton, Countess of Argyll, 18th October 1580, wants clause; no consent.

N° 269. Henry Philp, 10th September 1580, no Clause or Consent.

N° 270. John Black, 2d December 1580, wants the clause.

N° 265. William Gray, 3d 1580, has consent, but wants clause.

N° 261. wants both.

Book 1592, N° 49. James Carnegie, bastard of Robert Carnegie of Rattendrinch, wants the clause, the 10th February 1692.

N° 54. Robert Glen, son of William Glen in Nievenfide, wants clause and consent, 3d April 1593.

N° 55. John Anderson merchant in Aberdeen, son of John Anderson

Anderson burghes in Cullen, wants consent, 19th October 1693, but has the clause.

N<sup>o</sup> 95. James Macneillie, son of John Macneillie in Barrack, has the clause, no consent, 7th December 1595.

N<sup>o</sup> 154. Alexander Neilson, son of Mr John Neilson, wants the clause and consent, 24th August 1597.

N<sup>o</sup> 181. John Herriot, son of John Herriot in Kirkliston, 18th December 1588, wants clause and consent.

N<sup>o</sup> 184. James Gordon, son to James Gordon servant to Gordon of Blair, has neither clause nor consent, 17th December 1593.

N<sup>o</sup> 190. William Innes, son of Innes, wants consent and clause, 25th August 1592.

N<sup>o</sup> 225. John Kirkland, son of William Kirkland, 4th June 1593, wants clause and consent.

N<sup>o</sup> 5. David Farmer, 13th December 1593, has the clause, but no consent.

N<sup>o</sup> 48. Lindsay, the 6th December 1595, wants the clause.

N<sup>o</sup> 51. John Hay, 8th July 1594, wants the clause.

N<sup>o</sup> 62. James Maxwell, son of the Rector of 10th March 1594, wants the clause.

N<sup>o</sup> 100. James Scrymgeour, the 30th September 1588, wants the clause.

N<sup>o</sup> 132. James Drummond, son of Colernolly, wants both, 6th March 1595.

N<sup>o</sup> 180. John Wallace, 3d October 1595, has the clause.

The above are a few of the numberless Letters of Legitimation that are to be found in the Records, of which eleven only contain the ample Clauses which *James Morison's* has, fifty-eight want them.

## List of Letters of Naturalization.

- Robert Roodhouse, 3d February 1585.  
 Matthew Rearfolie, 12th October 1593.  
 Nicolas Tronos, February 13. 1537.  
 Noye Briffat, December 2. 1555. These Letters are almost *verbatim* the same with James Morison's Letters of Legitimation.  
 Charter, containing a naturalization in favours of Henry Carie Viscount of Falkland.  
 Naturalization in favours of several foreigners, 1633.  
 Ditto in favours of severals, April 21. 1636.  
 Ditto in favours of Arent de Groot, June 28. 1636.  
 Ditto in favours of Lewis, Thomas, John, and James Kirks, August 22. 1639.  
 Ditto in favours of Cornelius Van Aerfen, June 2. 1683.  
 Ditto in favours of John Kene, November 9. 1575.  
 Charter, containing a naturalization in favours of Sir William Alexander of Menstrie, 12th July 1625.  
 Ditto in favours of Sir Alexander Strachan of Thornton, November 8. 1625.  
 Ditto in favours of Sir John Colquhoun of Lufs, August 30. 1625.  
 Ditto in favours of Sir Richard Murray of Cockpool, July 19. 1625.  
 Ditto in favours of Sir Alexander Gordon of Clunie, August 31. 1625.  
 Ditto in favours of Sir Gilbert Ramsay of Balmain, September 3. 1625.  
 Ditto in favours of William Earl Marischal, May 28. 1625.  
 Ditto in favours of Sir Robert Gordon, son of the Earl of Sutherland, May 28. 1625.  
 Ditto in favours of Sir William Douglas of Glenbervie, May 30. 1625.



Ditto in favours of Sir David Livingston of Dunniepace, May 30. 1625.

Ditto in favours of Sir John Lesly of Wardreß, September 1. 1625.

Ditto in favours of Sir James Gordon of Lefmore, September 2. 1625.

Ditto in favours of Sir William Forbes of Monnymusk, March 30. 1626.

Ditto in favours of Sir Thomas Burnet of Leys, April 21. 1626.

Ditto in favours of Sir John Moncrief of that Ilk, April 22. 1626.

Ditto in favours of Sir William Murray of Clermount, July 1. 1626.

Ditto in favours of Sir John Wemyß of that Ilk, May 29. 1625.

Ditto in favours of Sir John Blackadder of Tullyallan, July 28. 1626.

Ditto in favours of Sir George Johnston of Caskieben, March 31. 1626.

Ditto in favours of Sir George Ogilvie of Carnoufie, April 24. 1626.

**Copy Letters of Legitimation in favours of *James Morison*, Son of *John Morison* of *Drumdoulls*.**

CAROLUS, Dei gratia, Magnæ Britannia, Franciæ, et Hiberniæ, Rex, fideique defensor: Omnibus probis hominibus suis ad quos præsentēs literæ pervenerint, salutem. Sciatis nos, cum avifamento et consensu præfidelis nostri consanguinei et consiliarii Joannis Comitæ Marriæ, Domini Erskine et Garrioch, et magni nostri thesaurarii, nostrorum computorum rotulatoris et collectoris regni nostri Scotiæ; necnon fidelis et dilecti nostri consiliarii Domini Archibaldi Naper de Merchington, Militis, thesaurarii, computorum rotulatoris et collectoris deputati ejusdem; ac reliquorum Dominorum Commissionariorum dicti regni

regni nostri, ex specialibus nostris gratia et favore, dedisse et concessisse, tenoreque præsentium dare et concedere, dilecto nostro Jacobo Morison, bastardo, filio naturali Joannis Morison de Drunidoullis, in Dumblane, inter ipsum et quondam Jeannam Ker procreato, plenariam potestatem, liberam facultatem, et licentiam specialem, ut ipse libere et licite disponere valeat, quovis tempore vitæ suæ, sive æger fuerit, sive sanus, sive in tempore mortis suæ, de omnibus et singulis terris suis, tenementis, annuis redditibus, assedationibus, prædiis, et possessionibus, ubicunque infra dictum regnum nostrum, sive extra idem existen. ac de omnibus et singulis bonis suis, mobilibus et immobilibus, quæsitis seu quærendis, cuicunque personæ, vel quibuscunque personis, prout ipsi magis videbitur expediens, conveniens, et opportunum; non obstante bastardia, in qua genitus et natus est, et privilegio juris nobis super bastardorum eschetis concess. : ac etiam ipsum Jacobum Morison, ad omnimodos actus legitimos in judicio et extra judicium exercendi, dignitatibus, hereditatibus, terris, privilegiis, honoribus, officiis, et possessionibus gaudendi, in omnibus et per omnia, sicuti de legitimo thoro procreatus fuisset, legitimum fecimus, et, nostræ regię majestatis plenitudine, legitimamus. Et si contigerit dictum Jacobum Morison, sine legitimis heredibus de corpore suo procreatis, vel sine dispositione per ipsum de terris suis et bonis antedictis facta, in fata decedere; nos, ex nostra regia potestate et autoritate regali, volumus et concedimus, et, pro nobis et successoribus nostris, decernimus et ordinamus, quod propinquior agnatus vel cognatus suus, ex parte patris vel matris, erit ipsius heres, eique in omnibus suis terris, redditibus, possessionibus, et bonis hereditariis, mobilibus, et immobilibus, habitis et habendis, succedet, et ad eadem per brevia capellæ nostræ regię introibit, simili modo, et adeo legitime vigore hujus nostræ legitimationis, ac si prædictus Jacobus Morison de legitimo thoro procreatus fuisset, vel heredes de corpore suo legitime procreatos habuisset, aut super dictis terris et bonis suis in vita sua disposuisset; sine aliquo obstaculo, revocatione, impedimento, clameo,



meo, quæstione, vel contradictione nostri vel successorum nostrorum, præfato Jacobo Morison, aut personæ vel personis cui vel quibus ipsi de præfatis terris suis, tenementis, annuis redditibus, possessionibus, vel bonis, disponere contigerit, siue propinquiiori agnato vel cognato suo, ex parte patris vel matris; quibus deficientibus, legitimis heredibus de corpore suo, vel dispositione per ipsum in vita sua, ut præmittitur, minime facta, in terris, hereditatibus et bonis suis antedictis succedet, quovis modo inde fiendi in futurum; *non obstan.* juris privilegio nobis super eschetis bastardorum, ut præmittitur, concess. aliisque juribus canonicis, civilibus, et municipalibus, consuetudinibus, parliamentorum actis, constitutionibus, vel statutis in contrarium quibuscunque, *renunciando* eisdem, pro nobis et successoribus nostris in perpetuum. *Præterea damus et concedimus, et pro nobis et successoribus nostris, nunc prout tunc, et e converso, quiete clamamus et transferamus, in et ad prædictum Jacobum Morison, et personam vel personas cui vel quibus ipsum de terris, hereditatibus, et bonis suis antedictis, disponere contigerit, necnon in et ad propinquiorem agnatum et cognatum; quibus deficientibus, legitimis heredibus de corpore suo, ei succedere contigerit in eisdem, totum jus et clameum juris, titulum, placitum, et quæstionem, quæ et quas nos vel successores nostri habemus, vel quovis modo habere vel clamare poterimus, sine aliquo obstaculo, ut dictum est.* Strictius inhiben. ne quis in contrarium harum nostrarum donationis et concessionis aliququaliter devenire præsumat, sub omni poena quam erga nostram Regiam in hac parte incurrere poterit majestatem. In cujus rei testimonium, præsentibus magnum sigillum nostrum apponi præcepimus, apud Edinburgum, ultimo die mensis Junii, anno Domini millesimo sexcentesimo vigesimo quinto, et anno regni nostri primo.